FOIA Number: 2009-1305-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Jose Cerda

Subseries:

OA/ID Number: 18931

FolderID:

Folder Title:
Brady Decision [4]

Stack:	Row:	Section:	Shelf:	Position:
S	98	2	4	2

BACKGROUND CHECK

Total Pages: __

LRM ID: REJ129

ISSUE

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, June 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Report on HR103 Private Security Officer Quality Assurance Act

DEADLINE: 11:00 AM Wednesday, June 11, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The attached lettter also comments on HR 474, Telemarketing Fraud Prevention Act, and HR 1532, Veterans' Cemetery Protection Act of 1997. Copies of all three bills (HR 103, HR 474, and HR 1532), were circulated last week as LRMs REJ120, REJ119, and REJ116, respectively.

DISTRIBUTION LIST

AGENCIES:
61-JUSTICE - Andrew Fois - (202) 514-2141
117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
36-Federal Communications Commission - Steve Klitzman - (202) 418-1900
49-Federal Trade Commission - Lorraine C. Miller - (202) 326-2195
25-COMMERCE - Michael A. Levitt - (202) 482-3151
86-Office of Consumer Affairs - Sandy Aguilar - (202) 565-0040
102-President's Crime Prevention Council - Noel Clay - (202) 39/5-5555
29-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
59-INTERIOR - Jane Lyder - (202) 208-4371
129-VETERANS AFFAIRS - Robert Coy - (202) 273-6666

EOP:
Robert W. Schroeder
Jose Cerda III
Leanne A. Shimabukuro
Peter G. Jacoby
Steven D. Aitken
Alice E. Shuffield

Lisa M. Kountoupes
James C. Murr
Edward H. Chase
Maya A. Bernstein
Ellen J. Balis
James Boden
John E. Thompson
Bruce W. McConnell
Lisa A. Gaisford
J C. Crutchfield
Mary Jo Siclari
Toni S. Hustead

LRM ID: REJ129 **SUBJECT:** JUSTICE Report on HR103 Private Security Officer Quality Assurance Act

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ______________________ (Date)
______________________ (Name)
______________________ (Agency)
______________________ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this reponse sheet

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Bill McCollum
Chairman
Subcommittee on Crime
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This purpose of this letter is to provide you with the views of the Department of Justice concerning various law enforcement related legislative proposals now under consideration by the Subcommittee. We note that certain of these proposals are similar or identical to bills on which the Department submitted written comments in the 104th Congress.[1]

H.R. 103

The "Private Security Officer Quality Assurance Act of 1997" proposes new authority for "associations" of employers of private security officers to submit fingerprints or other forms of "positive identification" directly to the Department of Justice for criminal history records checks. Such an approach would increase the federal role, by bypassing current state records check procedures, in an area historically handled by state and local government -- the oversight and regulation of private security officers. We applaud the goal of this bill, enhancing the quality of private security officers. However, we have serious concerns regarding the background check mechanism as proposed and the scope of the term "private security officer" as defined.

The Department opposes any procedure that bypasses the initial fingerprint check conducted through state criminal record systems. State authorities handling security officer applicant fingerprint cards should forward to the FBI only those cards for

[1] One of the bills about which you solicited our views is H.R. 1683, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act." Our views on this legislation are under development and will be submitted under separate cover.

which no disqualifying record or substantive information is identified at the state or local level. The identification of such disqualifying information obviates the need for a national check, thus resulting in the savings of time and expense attributable to redundant FBI processing. FBI criminal history record checks are presently conducted, following such state records checks, for prospective security guards, private patrolmen, and watchmen pursuant to Pub. L. 92-544, in those states which have enacted appropriate enabling legislation.

In addition to conserving federal resources, conducting state records checks first permits the identification of potentially disqualifying information which may only be reported in state records. An individual's criminal history record at the state level often contains arrests and dispositions that have never been reported to the FBI.

Moreover, state systems tend to be more comprehensive and up-to-date than the Federal system, because state courts report to the state system, not the federal system. This is particularly true in the case of non-felony arrests and convictions. While Federal criminal records for felony arrests are improving daily, there are many important criminal history details that a prospective private security employer would find important and that are not accurately maintained in Federal data bases. These include: misdemeanor crimes of domestic violence; misdemeanor sex offenses; misdemeanor drug possession offenses; and impaired driving offenses.

Our National Instant Check System -- which will make enforcement of the Brady Handgun Control Act even more effective than it is now -- will focus on <u>state</u>, not Federal criminal history systems. Indeed, the states have been the direct beneficiaries of over $100 million in Federal funds for criminal records improvements over the past two years.

In addition to the foregoing concerns, we also believe that the definition of "private security officer" in the bill is overly broad and would reach a wide range of personnel beyond those who are properly viewed as private security officers or guards by the general public. The findings in Section 2 of the bill suggest that private shopping mall and other facility security officers are the intended subjects of this legislation, yet the bill's definition would encompass, or arguably encompass, even tavern "bouncers," parking lot attendants, airline gate personnel, ticket-takers at virtually any facility, non-police park rangers, pool life guards, theater ushers, and fire alarm technicians.

"Association of employers of private security officers" is not defined, and would seem to apply even to two affiliated independent contractor private security officers (each of whom is deemed an "employer" pursuant to the definition in Section 5). The combined expansive nature of the "private security officer" and "association" categories could lead to thousands of groups or "associations" of private firms submitting directly to the FBI an extraordinary volume of names of applicants for many types of positions which clearly are not "private security officers" as that term is routinely used in law enforcement. In addition to the resource burdens this would represent for the FBI, the risk of inappropriate inquiries (for reasons other than legitimate applicant screening for covered positions) would increase with the volume of authorized requestors. The widespread dissemination of this kind of information would raise significant privacy concerns.

H.R. 474

This bill, which is identical to H.R. 1499 as introduced in the 104th Congress, reflects a commitment to strengthen the laws relating to telemarketing fraud and other forms of fraud directed at vulnerable victims, a goal which the Department certainly shares. We have, however, several significant drafting concerns with H.R. 474, some of which we note were addressed in the version of the bill that passed the House after consideration of our last year's comments.

Section 2(a) of the bill would amend the general civil forfeiture provisions in 18 U.S.C. § 981(a)(1), by including a new subparagraph to make forfeitable any real or personal property "constituting, derived from, or traceable to, any proceeds obtained directly or indirectly to (sic) a violation of section 2326 [of title 18]."

First, the Department views 18 U.S.C. § 2326 as a sentencing enhancement for telemarketing fraud cases brought under 18 U.S.C. §§ 1028, 1029, 1341, 1342, 1343, and 1344, rather than as a separate offense. (Section 2327(a), dealing with restitution, does -- inaccurately in our view -- refer to section 2326 as an "offense." H.R. 1499, as passed by the House in 1996, included an amendment of section 2327(a) that would have eliminated this reference and helped clarify that section 2326 is in fact a penalty enhancement). Accordingly, the Department suggests that the pertinent language of the new proposed subparagraph be revised to state "any gross proceeds obtained directly or indirectly from a violation of section 1028, 1029, 1341, 1342, 1343, or 1344 relating to telemarketing (as defined in section 2325 of this title), or a conspiracy to commit such an offense." We note that we suggest inserting the adjective "gross" before "proceeds" to avoid any implication that only net proceeds are covered, since current 18 U.S.C. §§ 981(a)(1)(F) and 982(a)(6) use "gross proceeds."

Second, the provisions of proposed subsection 2(a) of the bill would also direct the use, as needed, of property forfeited under the new subparagraph "for the national information hotline established under section 250008 of the Violent Crime Control and Law Enforcement Act of 1994 and other enforcement of section 2326." The Department respectfully suggests that this provision is unnecessary for several reasons. As noted in the bill, the Violent Crime Control and Law Enforcement Act of 1994 authorized the Department, subject to the availability of appropriations, to establish a national toll-free hotline for providing general information on telemarketing fraud and gathering information related to possible violations. For some time, the Federal Trade Commission and the National Association of Attorneys General, with the cooperation of the National Consumers League, have successfully been operating the Telemarketing Complaint System (TCS), a national database for telemarketing fraud complaints. The TCS, in turn, relies heavily on complaints received through the national toll-free hotline maintained by the League's National Fraud Information Center.

The Department of Justice, the Federal Bureau of Investigation, the Postal Inspection Service, and other investigative and regulatory agencies have access to the TCS, and have it found it extremely helpful for investigative leads and strategic intelligence for telemarketing fraud investigations. The Department has therefore relied on the TCS and the National Consumers League's hotline, rather than expend additional funds to establish a competing hotline and database, which is likely to create confusion among telemarketing fraud victims. Therefore, this provision is unnecessary; the Department would, in any event, oppose the use of forfeiture provisions to fund telemarketing fraud enforcement efforts. Accordingly, the Department recommends that this provision of the bill be deleted.

Subsection 2(b) of the bill would establish counterpart language in 18 U.S.C. 982(a) for criminal forfeiture. For the reasons stated above concerning subsection 2(a), the Department recommends that the bill's first sentence be revised as follows: "The court, in sentencing an offender convicted under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, where the offense involved telemarketing (as defined in section 2325 of this title), shall order that the offender forfeit to the United States any real or personal property constituting, derived from, or traceable to, any gross proceeds that the offender obtained directly or indirectly as a result of the offense." We point out as a technical matter that, although the bill would place this new provision in paragraph (6) of section 982(a), that subsection already contains two paragraphs (6). Accordingly, the proposed provision should be numbered (8). We further point out that there are no applicable procedures for subsection (b)'s telemarketing fraud criminal forfeiture provision, which are necessary for its implementation, nor for several other provisions already in section 982. Accordingly, we suggest the inclusion of section 501(a) of

H.R. 1745 (the Administration's comprehensive forfeiture bill), which provides uniform procedures for all section 982 criminal forfeitures by amending section 982(b)(1) as follows:

UNIFORM PROCEDURES FOR CRIMINAL FORFEITURE

(a) IN GENERAL.-- Section 982(b)(1) of title 18, United States Code, is amended to read as follows:

"(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C § 853), except for subsection 413(d) which shall not apply to forfeitures under this section.".

Likewise, for the reasons set forth above, the Department respectfully recommends that the second sentence of the proposed section 982(a)(6), relating to the use of forfeited proceeds to fund a national information hotline, be deleted.

Section 3 of the bill would amend section 2327(a) of title 18, United States Code, by giving priority to payment of amounts due pursuant to restitution under section 2327 "over the payment of any fine or the forfeiture of any property under [the previously proposed addition to section 982(a)] from which such payment could be made or derived." This would inadvertently provide a potential windfall for some convicted telemarketing fraud defendants, by allowing them -- if they have non-forfeitable assets from which to make court-ordered restitution -- to keep those assets and make restitution with otherwise forfeitable assets instead. We have no quarrel with the bill's policy of giving priority to restitution for the victims of telemarketing fraud and are willing to work with the Subcommittee to achieve that result, without providing a windfall to convicted telemarketers. Indeed, we would again commend the Subcommittee's attention to H.R. 1745, which includes a provision that would amend the general criminal forfeiture procedural statute, 21 U.S.C. § 853, to accomplish this goal.

Section 4 of the bill would direct the United States Sentencing Commission to amend the Sentencing Guidelines "to increase by 2 levels the vulnerable victim adjustment [section 3A1.1]." The Department notes that, as a result of amendments adopted in 1995, the vulnerable victim provision now includes a three-level enhancement if the defendant intentionally selected a victim or property on the basis of race, religion, gender or certain other specified factors. It also includes a statement in the commentary that would authorize an upward departure, in addition to the two-level enhancement for a vulnerable victim under section 3A1.1, if both the current offense and a prior offense involved a vulnerable victim, regardless of the type of offense. The need for an additional two-level enhancement for all cases that involve vulnerable victims, in light of these recent amendments, is not clear. It would be preferable for the Sentencing Commission to be asked to study the sufficiency of sentences involving vulnerable victims to determine if further enhancements are needed.

Section 5 of the bill would also direct the Sentencing Commission to amend the Sentencing Guidelines "to increase the offense level for any fraud offense by 2 levels if [the] defendant conducted activities to further the fraud from a foreign country in order to impede prosecution for the offense." The Department supports the concept of seeking enhanced punishment under the Guidelines for those who victimize persons in the United States through fraudulent practices which are based outside the United States. As a practical matter, however, the proposed standard would require the government to establish, and the court to find, that the defendant had conducted his affairs beyond the United States' borders specifically to impede prosecution for the fraud offense of which the defendant was convicted. This standard, in many cases, would likely be exceptionally difficult to meet, as defendants could plausibly claim that they conducted their business affairs in the foreign country simply because they wanted to reside and do business there. Therefore, the Department suggests that the phrase "in order to impede prosecution for the offense" be deleted.

Section 6 of the bill would require all presentence reports under the Federal Rules of Criminal Procedure to "include information about the age of each victim of each fraud offense for which a defendant is convicted." The Department supports the concept of acquiring additional information in telemarketing cases about the ages of fraud victims, so that better empirical evidence can be obtained by the courts and the Department about patterns of victimization. The wording of section 6, however, is problematic. On the one hand, it is overly broad and potentially burdensome since it applies not only to telemarketing but to all fraud cases. On the other hand, the provision could unduly limit the amount of information available to sentencing courts, because some courts might construe it to require age information only for persons actually named in the counts of conviction as victims, even though many more persons may have been victimized by the scheme to defraud that underlay the precise counts of conviction. Accordingly, the Department recommends that section 6 be revised to read as follows: "In a telemarketing case, any presentence report required under the Federal Rules of Criminal Procedure shall, if practicable, include information about the age of each victim of each scheme to defraud which has been proved as part of each fraud offense of which a defendant is convicted."

In addition to the foregoing comments on the bill, we urge the Committee to add a provision to H.R. 474 that would address a discrepancy between the telemarketing fraud restitution provisions of 18 U.S.C. § 2327 and the general restitution provisions of 18 U.S.C. § 3663. Section 3663(a)(2) defines the term "victim," for purposes of that section, to include, "in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." The current definition of the term "victim" in section 2327(c), however, does not contain such language. Because federal telomarketing fraud prosecutions routinely include charges of conspiracy, wire fraud, and mail fraud, adding the quoted language from section 3663(a)(2) to section 2327(c) would clarify that Congress intended the restitution provisions of section 2327 to have the broadest permissible scope, so that restitution, where available, could be ordered for all victims of the conspiracy or scheme, even if those victims are not listed by name in any count or overt act in the indictment.

Lastly, we urge that H.R. 474 be amended to include in the predicate offenses in 18 U.S.C. § 2326 for which enhanced penalties can be imposed a conspiracy to commit any of the six enumerated substantive crimes when the offense victimized ten or more persons over the age of 55 or targeted persons in that age group. We point out that H.R. 1499, as passed by the House last year, included such a provision.

H.R. 1532

H.R. 1532, the "Veterans' Cemetery Protection Act of 1997," would create in title 18, United States Code, a new section 1865, "Vandalism and theft at national cemeteries," at the conclusion of chapter 91 (Public Lands). The proposed new section, which appears to be modeled on 18 U.S.C. § 1361, "Government property or contracts," would punish whoever "willfully injures or commits any depredation against any property of a national cemetery, or attempts to commit" such offenses. Stealing or knowingly converting to personal use any property of a national cemetery, receiving, concealing, or retaining such property with the intent of converting that property for personal gain with knowledge of its stolen nature, and selling, conveying, or disposing of such property without authorization are also prohibited.

The Department of Justice supports the goal of H.R. 1532 to deter vandalism and theft at national cemeteries, though we recommend some modification of the proposed sanctions in the interest of consistency with existing theft of property offense penalties, and certain technical revisions, as described below, to clarify the coverage of "attempt" offenses.

<u>Jurisdiction.</u> Since "national cemeteries" as defined within the draft bill are United States property, or are on land over which there is federal criminal jurisdiction, willful damage or

depredation of such facilities and theft of government property from such facilities are generally already subject to federal prosecution pursuant to 18 U.S.C. §§ 641 (theft of government property), 1361 (destruction of government property), 1363 (destruction of property within the special maritime and territorial jurisdiction of the United States), or 13 (the Assimilative Crimes Act). While past service in the United States armed forces of the veterans buried at such facilities might not alone constitute a sufficient constitutional basis for the assertion of federal jurisdiction, we believe that the federal control of the cemeteries to which this legislation applies establishes an adequate federal nexus to support federal jurisdiction.

"Attempt" Coverage. Although the coverage of attempted offenses follows the approach of 18 U.S.C. § 1361 in discussing the value of "attempted damage," we believe that the approach of 18 U.S.C. § 1366(a), in addressing damage which "in fact exceeds [the designated amount] or would if the attempted offense had been completed" is more precise, and thus preferable. Accordingly, we recommend that "damage or attempted damage to such property exceeds the sum of $1000" in (a)(1) of the bill be replaced with "actual damage exceeds $1000 or would have exceeded $1000 if the attempted offense had been completed" and that (a)(2) be revised in a consistent fashion.

Sanctions. The theft and related receipt, concealment, and possession components of the bill provide a maximum sanction of 15 years' incarceration, regardless of the value of the property involved. This sanction exceeds 18 U.S.C. § 641's maximum sentences of 10 years' incarceration for property worth more than $1000, and of one year's incarceration for offenses involving property worth $1000 or less. We recommend that the maximum sentences provided in H.R. 1532 be made consistent with those in section 641 to avoid creating a distinction in which offenses involving national cemetery property are subject to more severe penalties than offenses involving most other Federal Government property, including theft or destruction of our nation's most important historical papers and monuments.

Concurrent Jurisdiction Enforcement. Although the Department does not oppose the emphasis upon federal criminal justice response which H.R. 1532 seeks to establish for desecration and other crimes against graves at national cemeteries, it is important to recognize the vital continuing role of state and local law enforcement agencies in responding to such criminal conduct. State and local criminal laws also apply to offenses within the scope of H.R. 1532 if those offenses are committed at facilities subject to concurrent jurisdiction or if those offenses involve prohibited receipt, concealment, sale, or other disposal of property stolen from a national cemetery to the extent that such conduct occurs beyond federal facilities.

Even when federal criminal jurisdiction exists, federal authorities should be expected to defer to local investigation and prosecution if certain conditions favor state or local criminal justice response. For example, there are many more state and local police than federal agents, and thus the local law enforcement response to such incidents may be faster, and involve a greater range of available resources in the immediate vicinity. Local police are often more knowledgeable about the activities of the possible perpetrators of such vandalism offenses, since those perpetrators may have previous local criminal justice contacts involving similar or other criminal conduct. A perpetrator may even have probationary or other judicially imposed status in the state or local criminal justice system, which status will offer additional and more prompt sanctions when raised in conjunction with new charges.

* * * * *

Thank you for the opportunity to comment on this matter. The Office of Management and Budget has advised that there is no objection to this report from the standpoint of the Administration's program. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

Andrew Fois
Assistant Attorney General

misc.610
6/10/97
12:30 PM

Date: 09/19/97 Time: 14:08
BAdvocacy group says Brady law more effective than expected

WASHINGTON (AP) States that require background checks on prospective handgun purchasers are reducing interstate gun trafficking, according to a study by an organization advocating stricter controls.

The Center to Prevent Handgun Violence said Friday that figures from the federal Bureau of Alcohol, Tobacco and Firearms demonstrate that checks and waiting periods required by the so-called Brady law had a major and positive effect.

``When every state checks out its handgun purchases, criminals have nowhere to go to `lie and buy,''' Sarah Brady, the center's chairwoman, said at a news conference.

``This research demonstrates that the law that carries my husband's name is doing even more than it was designed to do in keeping guns out of the hands of criminals,'' she said. James Brady, the former White House press secretary, was wounded with President Reagan in an assassination attempt on the president in 1981.

Twenty-eight states have their own Brady laws and many law enforcement officials in the others have continued the checks.

The Center to Prevent Handgun Violence found that states requiring checks since the Brady law went into effect in 1994 are up to 86 percent less likely to be sources of guns used in crimes in other states than they were prior to the law's enactment.

The study included the period between 1989 and January 1997.

``It is clear that the Brady law has helped to keep guns out of the hands of thousands of criminals and others who are not competent to possess a firearm,'' said R. Gil Kerlikowske, Buffalo, N.Y., police commissioner and president of the Police Executive Research Forum.

The study focused on four states Ohio, Kentucky, Mississippi and Georgia that data suggested were sources of easily purchased handguns before Brady.

In Ohio, for example, the study examined data for guns traced back to that state from Illinois, Michigan, New York and Pennsylvania. Those four states accounted for 52 percent of crime guns recovered and traced back to Ohio between 1989 and 1997.

The study found that Ohio's out-of-state guns recovered in Michigan since Brady fell by 33 percent, in Illinois by 75 percent, in New York by 79 percent and in Pennsylvania by 36 percent.

Douglas Weil, the center's research director, who conducted the study, said data from other states corroborated the Ohio findings.

The Justice Department reported earlier this month that police background checks blocked 173,000 illegal handgun sales since enactment of the Brady law, including 70,000 in 1996 alone.

The Supreme Court ruled in June that the federal government could not force state and local authorities to conduct Brady's background checks, but left intact its five-day waiting period for a handgun purchase.

APNP-09-19-97 1410EDT

U.S. Department of Justice
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

September 18, 1997

TO: Jose Cerda
456-7028

FROM: Nicholas M. Gess, Director
Office of Intergovernmental Affairs
U.S. Department of Justice, Room 1340 Main
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
(202) 514-3465 (office)
(202) 514-2504 (facsimile)
gessni@justice.USDOJ.gov (EMAIL)

SUBJECT: Brady / Arkansas

 # PAGES: (including cover sheet)

REMARKS: Information copy.

U. S. Department of Justice

Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

September 18, 1997

MEMORANDUM FOR: The Cabinet Secretary

FROM: Nicholas M. Gess, Director
Ian P. Alberg, Assistant Director
Office of Intergovernmental Affairs
Department of Justice

SUBJECT: Hot Issues for Little Rock, Arkansas - SPECIAL

This is a special Hot Issues memorandum to apprise you of the circumstances surrounding enforcement of the Brady Act in Arkansas, in light of the President's personal role in securing passage of the Brady Act and the fact that the primary Arkansas actors are the Governor and Attorney General of that state.

Arkansas is the only state in the nation where no Brady background checks are currently being completed. As you may recall, the Supreme Court decided in June, that the provisions of the Brady Act which required local law enforcement to conduct the background checks were unconstitutional, Printz v. United States. Nonetheless, the background check system remains completely legal, although voluntary. A rough survey indicates that 94% of all jurisdictions in the country are continuing to do these checks on a voluntary basis.

In Arkansas, one statewide entity, the Arkansas State Police (ASP) is designated as the chief law enforcement officer (CLEO) for purposes of these checks and, until June, was conducting them. The ASP charged a fee, authorized by Arkansas law, to defray the costs of conducting the checks. Subsequent to the Printz decision, Arkansas Attorney General Winston Bryant issued a formal opinion to the effect that Arkansas law not only allowed, but required, the ASP to conduct the checks. Moreover, the opinion found that the fee charged by the ASP was lawful and did not violate a provision of the Arkansas Constitution.

Nonetheless, Governor Huckabee, on reported advice of his Counsel, determined that the Attorney General Bryant was wrong and ordered the ASP to cease conducting the checks. Since the Governor's order, no checks have been conducted.

- The Brady Act has prevented over a quarter-million felons, fugitives, military deserters and others who are prohibited from firearms possession from obtaining a firearm.

- We estimate based on Bureau of Justice Statistics reporting, that since Arkansas stopped conducting Brady background checks, approximately 100 felons have been able to purchase a firearm -- undetected -- in Arkansas. Had the background checks been conducted, the ASP would likely have detected the felony conviction and would have caused the seller to deny the sale.

Because the President will likely encounter a number of local officials, particularly, Governor Huckabee, there is a unique opportunity for him to either engage in personal diplomacy on this issue or make an appropriate statement.

Panel to Urge Immigration Reforms Weighted Toward Families

By William Branigin
Washington Post Staff Writer

A bipartisan advisory commission will urge Congress to reform the nation's system for admitting immigrants to give priority to close family members who have been separated for years because of growing waits for visas.

In a final report to be issued before it disbands at the end of the month, the Commission on Immigration Reform will renew recommendations it made two years ago to overhaul the legal immigration system, and to ultimately reduce the number of people admitted, according to commission officials and a summary of the report obtained by The Washington Post.

When Congress revamped the nation's immigration law last year, it avoided the controversial issue of legal immigration. Yet the problems associated with it not only have persisted, but have grown steadily worse, according to panel members. The recommendations underscore the commission's view that the system remains dysfunctional and that failure to fix it has damaging consequences. It is a system that critics say often forces people to choose between their marriage vows and U.S. immigration law, drives immigrants to enter the country illegally and tends to penalize those who follow the rules while rewarding those who break them.

Of primary concern to the nine-member commission is the backlog of more than 1 million people waiting for legal status as the spouses and minor children of legal permanent residents, a category for which visas are capped at 88,000 a year. They are part of an overall backlog of 3.5 million people around the world whose applications have been approved, but who are awaiting family-sponsored immigrant visas to the United States in categories with numerical limits.

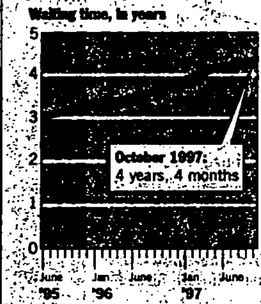
An estimated two-thirds of the spouses and minor children waiting for visas are already in the United States illegally. But more than 300,000 others remain abroad, playing by the rules but separated from their loved ones for years and unable to get even temporary visitor's visas because of a presumption that they would overstay.

"Since the commission first reported its findings on legal admission, the problems associated with family-based admissions have grown," the panel says in its forthcoming report. During the two-year interval, the waiting times between application and admission of immigrants' spouses and minor children have increased 40 percent and are still growing, officials said. This means that those who are receiving their visas now have had to wait more than four years and four months, compared to three years when the commission issued its report in June 1995.

For those applying today, the projected wait is even longer—up to 10 years for the spouses and children of sponsors who remain in immigrant status. A sponsor can cut the waiting time by becoming a U.S. citizen, because relatives would not be subjected to numerical limits and thus could get visas quickly. But a legal immigrant must reside in the United States five years before becoming eligible to naturalize, and it takes up to two years for a citizenship application to be processed.

WAITING TIME

Legal permanent residents' spouses and children who got visas this month had to wait more than four years. New applicants could face a 10-year wait.



SOURCE: U.S. Commission on Immigration Reform

THE WASHINGTON POST

The increased waiting time "is a very disturbing development," said Robert C. Hill, a commission member.

Among those affected is Parmeshwar Coomar, a 33-year-old Indian immigrant from Calcutta who got married a year ago during a visit to his homeland. When he returned to the United States to resume his job teaching industrial engineering at a college in Wisconsin, he found that it would take several years to obtain an immigrant visa so that his wife could join him. Under current law, she cannot even visit him in the meantime.

Coomar and about 250 other highly skilled immigrants formed the Association of Professionals for Spouse Reunification to publicize their plight and seek help. They especially resent immigration law provisions that they say [illegible]ed people who entered the United States illegally in the first place, then brought their relatives in illegally to join them while taking up places in an interminable line of people waiting to acquire status as legal immigrants.

After granting legal status to 2.7 million illegal immigrants under a 1986 amnesty, the government allowed family members they had brought in illegally to stay and receive work permits under a "family unity" provision. Under a 1994 law that is scheduled to expire this month, foreigners who have overstayed their visas or otherwise remained in the country illegally also have been permitted to adjust to legal immigrant status in the United States by paying a fine, instead of having to return to their homelands as previously required.

"We continue to be bypassed as the ones that are law abiding and stupid," said Coomar, who came to the United States as a student and received an employer-sponsored immigrant visa in 1994. In his case, he said, even by naturalizing when he is eligible, he will not be able to bring his wife in until sometime after the turn of the century. With waiting times like that, he said, "I don't think any marriage is going to last."

The commission, appointed by the president and Congress under a 1990 immigration law, recommended in 1995 that legal immigration be revamped to set clear priorities for admissions and ultimately reduce the numbers of immigrants allowed into the country.

The panel recommended that the unification of "nuclear families"—defined as spouses and minor children—take precedence and that several other categories of family members be dropped, including the adult sons and daughters of U.S. citizens and legal immigrants and the siblings of U.S. citizens.

The commission proposed shifting the visa numbers for those categories into a program to reduce the backlog of separated nuclear families. Within that category, it recommended giving priority to those who were not covered by a 1986 amnesty for illegal aliens, meaning those who had not previously broken the immigration law. It also recommended that annual levels of legal immigration be reduced from about 720,000 at the time of its report to 700,000 for a transition period of [illegible] to eight years [illegible] to 550,000 after that.

The re[illegible]endations were incorporated into immigration bills in the House and Senate, but were later deleted in the face of stiff opposition from business and immigrants' rights groups. Among those who lobbied strongly for retaining the existing system was John Huang, a Taiwanese American at the center of a controversy over Democratic Party fund-raising.

Since then, legal immigration has surged, reaching 916,000 for fiscal 1996 and pushing the combined total for both legal and illegal immigration to about 1.2 million people a year. With most polls showing that Americans want immigration reduced, raising the limits to accommodate immigrants' spouses and minor children is not considered an option.

And key members of Congress, including the chairman of the Senate Judiciary subcommittee on immigration, Sen. Spencer Abraham (R-Mich.), remain staunchly opposed to any reordering of priorities as suggested by the commission.

"I am sympathetic to the plight of these individuals, and it may be an area we need to take a closer look at," Abraham said. "However, the backlog of the spouses and children of lawful permanent residents should not be used as a pretext to deny American citizens the ability to sponsor close family members."

To the commission, those "close family members," who include siblings and adult married sons and daughters and their own families, should not be taking visas at the expense of spouses and minor children. "We should not be allowing nuclear families to be separated to accommodate more extended families," Hill said.

Because the waits are so long—for those who apply today, it can take decades—the system has lost credibility, and many people resort to immigrating illegally, panel members said.

"When we have a dysfunctional immigration law, it shouldn't be surprising that people try to get around it," said Susan Martin, the commission's director.

Certainly, that option has crossed the minds of members of his association, said Coomar, the Indian immigrant in Wisconsin. But he said he is determined to keep working for a solution within the law.

"The one who is [illegible] abiding has to be rewarded in some way," he said.

Widnall, Senators, Tamraz on TV Talk Shows

Guests to be interviewed today on major television talk shows:

White House domestic policy adviser Bruce Reed; Air Force Secretary Sheila E. Widnall and Sens. Don Nickles (R-Okla.), Carl Levin (D-Mich.), and Richard G. Lugar (R-Ind.) on "Fox News Sunday" (WTTG), 9 a.m.

Sens. Thad Cochran (R-Miss.) and Joseph I. Lieberman (D-Conn.) and Attorneys General Hubert Humphrey III (Minn.) and Michael Moore (Miss.), on "Face the Nation" (CBS, WUSA), 10:30 a.m.

Rep. Henry J. Hyde (R-Ill.) and Sens. Orrin G. Hatch (R-Utah), John McCain (R-Ariz.), Russell D. Feingold (D-Wis.) and Mitch McConnell (R-Ky.) on "Meet the Press" (NBC, WRC), 10:30 a.m.

Businessman Roger Tamraz; former vice presidential chief of staff Roy Neel; Clinton-Gore '96 pollster Doug Shoen; and Sens. Robert G. Torricelli (D-N.J.) and Arlen Specter (R-Pa.) on "This Week" (ABC, WJLA), 11:30 a.m.

White House senior adviser Rahm Emanuel, Moore, Carlton, Tamraz, Democratic National Committee Co-Chairman Steve Grossman and Republican National Committee Chair Nicholson on "Late Edition With Frank Sesno" (CNN), [illegible]

Seek'ng to Make ' hem Safer, 'rosec tors H' the S ree s i NE

By Bill Miller
Washington Post Staff Writer

A small team of prosecutors is spending as much time in the community as in the courtroom, working with neighborhood residents in Northeast Washington to target car thieves, drug dealers and owners of long-abandoned buildings.

The 19 lawyers are part of a community prosecution effort begun last year in the D.C. police department's 5th District, a pilot program in which the prosecutors deal with everything from serious crime to nuisance complaints. Although no one is calling it a cure for crime, their work is winning praise from neighborhood leaders.

"I think it has a lot of potential," said Sally Byington, a Capitol Hill resident and community activist. "I hope it gets to continue to be a city model."

Former U.S. attorney Eric H. Holder Jr., who left office six weeks ago to become deputy U.S. attorney general, launched the program amid much fanfare 15 months ago as a way to bring his lawyers closer to the people they represent. It was patterned after similar ventures in Portland, Ore., and other cities.

Holder said he hoped eventually to expand the program into all police districts. Interim U.S. Attorney Mary Lou Leary has asked Congress to provide $5.8 million for 39 additional lawyers and 35 support staff to handle community prosecutions citywide.

"Our core mission still is successful prosecution. We haven't lost sight of that," Leary said. "But prosecutors also welcome the opportunity to interact more with the community, to work on the prevention end and be out front."

The 5th District, a bustling area with about 100,000 residents, long has been plagued by homicides, robberies and other crimes. Prosecutors have continued to give priority to those cases. But in the last year, they also have given more attention to the conditions that make some neighborhoods more vulnerable to crime: abandoned houses, broken street lights, vandalism and loitering. They've worked with neighbors, police and various city agencies.

"Stolen cars, abandoned cars, vacant houses where people are using drugs, trash problems, general criminal complaints. It's a totally different job," said Assistant U.S. Attorney Denise M. Abrahams. "It's been very rewarding. After getting a house boarded up, you have people calling and saying thank you. To them, it's a major, major improvement in their quality of life."

Abrahams works out of a satellite office at the 5th District station, in the 1800 block of Bladensburg Road NE, as does Assistant U.S. Attorney Stephanie G. Miller. Like Abrahams, Miller has found the new duties a challenge.

She has devoted much of her time to tracking the owners of neglected properties, trying to get grass cut on abandoned lots and developing leads on less-than-sensational crimes, such as the siphoning of diesel fuel from delivery trucks.

The other prosecutors on the team work

See POLICE, Page 3, Col. 1

Prosecutors Praised for Joining Police on the Beat in Northeast

POLICE, From Page 1

out of the main U.S. attorney's office but spend much of their time on the streets with police officers and residents. Their supervisors, Clifford T. Keenan and Brenda Johnson, encourage them to attend community meetings, meet merchants and mingle as much as possible.

Most of the prosecutors in the U.S. attorney's office follow a more traditional approach, drawing cases from across the city. They have specialties, handling cases such as homicides, robberies, sex offenses, domestic assaults and misdemeanors. In the 5th District, prosecutors are given a specific neighborhood and nearly every kind of case that originates there, ranging from drug-related killings to car thefts.

The initiative is an offshoot of community policing, a law enforcement philosophy that calls upon officers to help improve everyday conditions.

Police Chief Larry D. Soulsby recently reorganized his department to put more officers on the streets with their own narrowly defined geographic areas, known as patrol service areas. In the 5th District, the prosecutors not only work with the same residents daily but now they also work with the same officers. They have helped train the police in ways to make cases stronger, and the police in turn have helped show the prosecutors where the trouble spots are.

Assistant U.S. Attorney Timothy J. Heaphy, who covers Lincoln Park and nearby neighborhoods, said he has been more effective questioning suspects and building cases because he now knows the key players in the drug and car theft trade. "I never realized before when I would get a file dropped on my desk in a drug case how that person fit into the whole fabric," Heaphy said.

"It's a major, major improvement."

— Denise M. Abrahams,
assistant U.S. attorney

Police Capt. Ross E. Swope said he had doubts about the prosecutors' resolve when Holder announced the program last year. "I've dealt with bureaucracies my whole career," he said. "It starts out with a bang, and then, three weeks later, 'Where's the meat?' But this continued to evolve."

Swope said his officers used to encounter resistance from the U.S. attorney's office when arresting people for lesser crimes. Now, he said, prosecutors appreciate the need to deal with social and physical disorder. "It's a completely different culture with the community prosecutors," he said.

Dennis J. Hartzell said prosecutors helped get three houses on his street—the unit block of Rhode Island Avenue NE—boarded up after repeated complaints about drug dealing and other activities. He said he was stunned by the quick response from Assistant U.S. Attorney Mark J. Carroll and others.

"We'd all gotten in the mentality of not expecting anybody to be accountable," said Hartzell, a leader of the Bloomingdale Civic Association. "He [Carroll] is accountable. He called back, and he came here on his time and gave out business cards. He closed down some drug markets.

"It was the only thing that ever got about all the awful stuff in my neighborhood."

W/ Background checks rule – state-by-state strategy. Jose

Date: 09/09/97 Time: 14:17
bHandgun Control Inc. Gives States 'Back to School' Grades on Laws

To: National Desk
Contact: Jake Tapper of Handgun Control Inc., 202-289-5792

WASHINGTON, Sept. 9 /U.S. Newswire/ -- As U.S. schoolchildren go back to school, their home states have received grades for their efforts to protect kids from gun violence and gun accidents, according to Handgun Control Inc. (HCI).

Chaired by Sarah Brady, HCI is the nation's leading advocate for responsible and law-abiding gun use and ownership, and its annual report card rates each of the 50 states based on five laws essential to protecting children and teenagers from gun violence.

Each state was carefully rated both for the existence of five types of legislation that protect children from guns, and also for the comprehensiveness and effectiveness of that legislation. The five types of legislation include:

1. Carrying Concealed Weapons law -- whether or not individuals are allowed to carry loaded concealed guns, and if so, what training is required of them;
2. Juvenile Handgun Possession law -- whether or not it is illegal for an individual under the age of 18 to own a handgun;
3. Juvenile Handgun Sale/Transfer Prohibition law -- whether or not it is illegal to sell a handgun to someone under 18;
4. Child Access Prevention law -- whether or not adults are required to store their firearms responsibly and out of the reach of children;
5. ``Local Rights'' law, or ``Pre-emption'' -- whether the state has made it illegal for its cities to enact stricter gun control laws than exist in the state in general. For example, in 1995 the Georgia General Assembly pre-empted the city of Atlanta's attempts to more strictly regulate firearms, despite the fact that Atlanta led the nation in violent crime that year. Pre-emption has been a favorite legislative tool of the gun lobby.

``It is simply too easy for our children to get their hands on loaded, unlocked handguns,'' said Sarah Brady, chair of Handgun Control Inc. ``At this time that our children are heading back to school, states should be doing everything they can to make sure that this is not only a productive school year for them -- but a safe one as well. Ten thousand times a year, children fire a handgun, and almost 900 Americans die as as result. States need to provide safety precautions that will help protect our kids from handgun violence.''

On the federal level, Handgun Control Inc. is focusing on a bill that would require that purchasers of handguns also purchase child safety locks. Opposed by the gun lobby and its allies in Congress, child safety lock legislation will be offered in the coming weeks on the Senate floor as an amendment to the juvenile crime bill.

``Cars have seat belts. Medicine bottles have child-safety caps. Even teddy bears have to be flame resistant,'' Brady said. ``All we're asking is that guns -- which are designed to maim and kill -- have similar safety precautions so that if a child finds the family handgun, he or she can't use it.''

Following is a state-by-state breakdown with the:

-- state's grade;

-- state's number of firearms deaths for children and teenagers for 1994;

-- primary reasons for each state's grade included. If a state earned a ``B'' or better, positive reasons for its grade are included as well. (A more comprehensive breakdown of a state's grade is available);

-- state contact if available.

Alabama -- D

148 firearms deaths for children and teenagers for 1994

-- no juvenile possession law

-- no child access prevention law

-- no local rights

Contact: Dr. David Reynolds, 205-979-2999

--

Alaska -- D-minus

28 firearms deaths for children and teenagers for 1994

-- carrying concealed weapons allowed

-- no child access prevention law

-- no juvenile sale/transfer law

--

Arizona -- D

126 firearms deaths for children and teenagers for 1994

-- carrying concealed weapons allowed

-- no child access prevention law

-- no local rights

Contact: Geraldine Anderson, 602-516-8442

--

Arkansas -- D

63 firearms deaths for children and teenagers for 1994

-- carrying concealed weapons allowed

-- no child access prevention law

-- no local rights

Contact: Paige Markman, 501-371-9678; 501-371-9681

--

California -- B

893 firearms deaths for children and teenagers for 1994

-- Has yet to strengthen its child access prevention law, though legislation to that effect has passed in the Assembly;

-- Does have: juvenile possession law, juvenile sale/transfer law, child access prevention, local rights -- enacted esp. with child safety locks on handguns

Contact: Luis Tolley, 310-446-0056; fax 310-475-3147

--

Colorado -- C

67 firearms deaths for children and teenagers for 1994

-- carrying concealed weapons allowed

-- no child access prevention law

Contact: Sam Cole, 303-298-8001

--

Connecticut -- B-plus

53 firearms deaths for children and teenagers for 1994

-- Has yet to tighten its carried concealed weapons law

-- In addition, Connecticut SB 1257, which would have required the sale of a child safety lock for all handgun sales, was defeated in the final days of session

-- Does have: juvenile possession law, juvenile sale/transfer law, child access prevention, local rights

Contact: Sue McCalley, 203-637-2694, or Kim Harrison, 860-643-8175

--

Delaware -- C-plus

8 firearms deaths for children and teenagers for 1994

-- no local rights

Contact: Debbie Peden-Wilbur, 302-834-4069
--
Florida -- C-minus
230 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
-- no local rights
--
Georgia -- D
189 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
-- no juvenile possession law
-- no child access prevention law
-- no local rights
Contact: Ron Horn, 404-521-3605; fax: 404-572-5141
--
Hawaii -- B-minus
9 firearms deaths for children and teenagers for 1994
-- juvenile possession law could be stronger
--
Idaho -- D
25 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
-- no child access prevention law
-- no local rights
--
Illinois -- B
402 firearms deaths for children and teenagers for 1994
-- No child access prevention law
-- Does have: carrying concealed weapons prohibited, juvenile possession law, juvenile sale/transfer law, local rights, mandated tracing of any firearm found in illegal possession of person under 21
Contact: Dan Kotowski, 312-341-0939; fax: 312-341-9770
--
Indiana -- D
118 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
-- no child access prevention law
-- no local rights
Contact: Patty Williams, 765-282-2718
--
Iowa -- B minus
39 firearms deaths for children and teenagers for 1994
-- weak local rights
Contact: Jeremy Brigham, 319-363-7675
--
Kansas -- B minus
63 firearms deaths for children and teenagers for 1994
-- no child access prevention law
Contact: Karen O'Connor, 316-682-2872 or Eleanor Harris, 913-469-1722
--
Kentucky -- F
73 firearms deaths for children and teenagers in 1994
-- carrying concealed weapons allowed
-- no juvenile sale/transfer law
-- no child access prevention law
-- no local rights
Contact: Dr. Joe Casey, 502-228-5724; fax: 812-944-0719
--

Louisiana -- F
211 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
-- no juvenile possession law
-- no child access prevention law
-- no local rights
Contact: Richard Haymaker, 504-388-8471; fax: 504-769-3810
--
Maine -- D
14 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
-- no juvenile possession law
-- weak child access prevention law
-- no local rights
--
Maryland -- B
96 firearms deaths for children and teenagers for 1994
-- carrying concealed weapons allowed
Contact: Nancy Fenton, 410-889-1477
(more, more)
-0-
/U.S. Newswire 202-347-2770/
APNP-09-09-97 1418EDT

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics
Bulletin

A National Estimate

September 1997, NCJ 165704

Presale Handgun Checks, 1996

By Donald A. Manson
BJS Program Manager

Darrell K. Gilliard
BJS Statistician

During 1996, about 2,593,000 background checks of potential handgun buyers prevented an estimated 70,000 purchases. The inquiries revealed purchasers' ineligibility to buy a handgun under State or Federal laws, particularly the Brady Handgun Violence Prevention Act (Pub. L. No. 103-159, 107 Stat. 1536 (1993)) that became effective on February 28, 1994. Nearly 68% of those rejected had been convicted of a felony or were under felony indictment.

From March 1, 1994, through 1996, handgun sellers submitted an estimated 7.8 million inquiries about potential handgun buyers and received about 173,000 rejections. These estimates, drawn from published estimates of inquiries about potential purchasers of firearms, include about 62,000 rejections of handgun purchase applications in the 9 months of 1994 and about 41,000 rejections for all of 1995.

The Firearm Inquiries Statistics (FIST) program administered by the Bureau of Justice Statistics (BJS) collected the 1996 data. FIST was initiated in 1994 to describe presale background checks of applicants to buy a handgun from a Federal firearm licensee. Chief law enforcement officers made the checks in accordance with the Brady Act or comparable State legislation.

Highlights

Presale handgun checks: Estimates of inquiries and rejections, 1996

	Presale checks for handguns, 1/1/96-12/31/96		
	All States	Original Brady States*	Brady States during 1996
Inquiries and rejections			
Inquiries/applications	2,593,000	1,213,000	816,000
Rejected	70,000	44,000	25,000
Rejection rate	2.7%	3.6%	3.1%
Reasons for rejection			
Felony indictment/conviction	47,000	35,000	15,000
Other	23,000	9,000	10,000

Note: All estimated counts are rounded. Percentages were calculated from unrounded data. Detail may not add to total because of rounding.

*Original Brady States are the 32 States required to follow presale review procedures set out in the Brady Act when it became effective on February 28, 1994. At the end of 1996, 23 of the 32 were still Brady States. (See table 2.)

- During 1996 about 70,000 out of an estimated 2,593,000 applications for the purchase of a handgun were rejected due to presale background checks of the potential purchasers.

- From the inception of the Brady Handgun Violence Prevention Act until the end of 1996, an estimated 7,782,000 applications for handgun purchases resulted in 173,000 rejections through background checks.

- The estimates of applications and rejections for handgun purchases include States operating under the Brady Act (Brady States) and States with comparable statutes preventing handgun sales to prohibited persons (Brady-alternative States).

- Overall, 2.7% of all handgun purchasers had their application for purchase rejected during 1996. About 68% of the rejections were for a prior felony conviction or a current felony indictment.

- This Bulletin reports only estimates of attempted handgun purchases, and does not include rifles or other long guns.

- A previous BJS Bulletin, *Presale Firearms Checks* (NCJ-162787, February 1997), included all attempted firearm purchases from March 1, 1994, to December 31, 1995, and potential handgun purchases during the first 6 months of 1996. It estimated that over the period, on average 6,600 firearm applications were rejected each month.

Table 1. Reasons for rejection of handgun purchase applications, national estimates, 1996

Reasons for rejection	All States	Original Brady States	Brady States during 1996
Total	100.0%	100.0%	100.0%
Felony (indictment/ conviction/no disposition)	67.8	78.9	61.0
Fugitive	6.0	7.5	13.0
State law prohibition	5.5	.9	--
Restraining order	3.9	2.8	3.5
Mental illness or disability	1.5	.4	.8
Drug addiction	1.2	1.8	4.4
Local law prohibition	.7	.3	.7
Other*	13.4	7.4	16.6

--Less than .05%.
*Includes illegal aliens, juveniles, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, domestic violence, and other unspecified persons. At the end of 1996, 23 of the 32 original Brady States were still Brady States.

The estimates of applications and rejections for handgun purchases include States operating under the Brady Act (Brady States) and States with comparable statutes preventing handgun sales to prohibited persons (Brady-alternative States). The original 32 Brady States started following the Brady Act review procedures on February 28, 1994. There were 18 original Brady-alternative States. At the end of 1996, because of changed statutes, there were fewer Brady States (23) and more Brady-alternative States (27) than originally.

Rates of rejection of potential handgun purchases in 1996 can be compared for these sets of States — the original or current grouping of Brady and Brady-alternative States.

In 1996 the original Brady States processed 1,213,000 applications and rejected about 44,000, a rejection rate of 3.6%. The original Brady-alternative States processed 1,380,000 applications and rejected 26,000 — 1.9%, which differed significantly from the rate for the original Brady States.

The current Brady States in 1996 processed 816,000 applications, of which they rejected 25,000, a rejection rate of 3.1%. The current Brady-alternative States processed 1,778,000 and rejected 45,000 — 2.5%, a rate that was not significantly different from the rejection rate of current Brady States.

For all States, the most prevalent reason for rejection was that the applicant either was under felony indictment or had a felony conviction (67.8%) (table 1). Being a fugitive from justice (6.0%) or a violator of a State law prohibition (5.5%) were the next most prevalent reasons for rejection of a handgun purchase, followed by being under a restraining order (3.9%).

Almost all States are able to check computer databases to determine past criminal convictions. Some States are able to refer to other databases to check additional characteristics that may make a person ineligible to purchase a handgun — fugitive status, court restraining orders, and mental illness.

In the 45 States that reported checking a database for fugitive status, 6% of handgun application rejections were for such a status. In the 32 States checking for restraining orders, potential purchasers under court order accounted for 6% of application rejections. Sixteen States reported searching databases for applicants with mental illness; in these States mental illness accounted for 3% of the handgun application rejections.

Nonfelony reason	Percent of rejections in States which search records for specific nonfelony reasons
Fugitive	6%
Court restraining orders	6
Mental illness	3

These categories are defined in the Federal Gun Control Act of 1968, as amended, or related State legislation. During 1996 background checks were made on almost 2.6 million applicants for handgun purchases. Since the inception of the Brady Act, nearly 7.8 million background checks have been made. Through the end of 1996 about 173,000 of these applicants were prevented from legally purchasing a handgun.

Statewide reporting of handgun applications and rejections

State governments, the Federal Bureau of Investigation (FBI), and the Bureau of Alcohol, Tobacco and Firearms (ATF) have cooperated to identify about 5,400 law enforcement agencies and their heads as chief law enforcement officers (CLEOs) nationwide. Data for 1996 were collected from 311 CLEOs out of a sample of 600.

Among the responding CLEOs, 21 served as the only CLEO for the State and provided statewide totals (table 3). These States, which represented 50% of U.S. resident population and over half of the total applications for handgun purchases during 1996, processed 1,513,129 applications and rejected 36,030 — a rejection rate of 2.4%. Seventy-three percent of rejections were for a past felony conviction or felony indictment.

Reason for rejection by 21 Statewide CLEOs	
Felony (indictment/ conviction/no disposition)	73%
Fugitive	6
State law prohibition	4
Restraining order	4
Mental illness or disability	1
Drug addiction	1
Other*	11

*Includes illegal aliens, juveniles, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, domestic violence, and other unspecified persons.

Background

Thirty-two States and Puerto Rico were required to follow the review procedures set forth in the Brady Act when it became effective (identified in this Bulletin as *original Brady States*).

By the end of 1996, the number of States following the Brady Act review procedures rather than alternative State statutes had dropped to 23 (identified as *current Brady States;* see table 2 for each State's Brady status.)

Pursuant to the Federal Gun Control Act of 1968, as codified at 18 U.S.C. § 922, the sale of firearms is prohibited if the prospective purchaser—

- is a juvenile;
- is a fugitive from justice;
- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than 1 year;
- is an unlawful user of a controlled substance;
- has been adjudicated as a mental defective or committed to a mental institution;
- is an alien unlawfully in the United States;
- was discharged from the armed forces under dishonorable conditions;
- has renounced U.S. citizenship;
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child; or
- is a person convicted of domestic violence.

Table 2. Gun purchaser background checks for handgun purchases, by State, 1996[a]

State	Brady Status: Original 3/1/94	Brady Status: Current 12/31/96	Number of law enforcement agencies responsible for record checks	State databases being accessed: Criminal histories	Wanted fugitives	Restraining orders	Mental health
Alabama	■	■	67	■	■		
Alaska	■	■	35	■	■	■	
Arizona	■	■	1	■	■		
Arkansas	■	■	1	■	■	■	
California[b]			1	■	■	■	■
Colorado	■		1	■	■	■	
Connecticut			1	■	■	■	
Delaware[b]			1	■	■		■
Florida[b]			1	■	■	■	
Georgia	■		1	■	■		■
Hawaii[b]			4	■			■
Idaho	■		1	■	■	■	
Illinois[b]			1	■	■	■	■
Indiana			1	■			
Iowa			99	■	■	■	■
Kansas	■	■	123	■			
Kentucky	■	■	5	■	■	■	
Louisiana	■	■	64	■	■		
Maine	■	■	128	■	■	■	
Maryland			1	■	■	■	
Massachusetts			270	■	■	■	■
Michigan			595	■	■	■	■
Minnesota	■		568	■	■		■
Mississippi	■	■	263				
Missouri			115	■	■	■	
Montana	■	■	56	■	■		
Nebraska			95	■	■		
Nevada	■	■	1	■	■		
New Hampshire	■		1	■	■	■	
New Jersey			483	■	■	■	■
New Mexico	■	■	113	■	■		
New York			58	■	■	■	■
North Carolina	■		100	■	■	■	
North Dakota	■	■	53	■	■	■	
Ohio	■	■	1	■	■	■	
Oklahoma	■	■	440	■			
Oregon			1	■	■	■	■
Pennsylvania	■	■	67	■	■		
Rhode Island[b]	■	■	39	■	■	■	■
South Carolina	■	■	1	■	■		
South Dakota	■	■	66	■	■	■	
Tennessee	■		96	■	■	■	
Texas	■	■	991	■	■	■	
Utah	■		1	■	■	■	
Vermont	■	■	22	■	■	■	
Virginia[b]			1	■	■	■	■
Washington	■		291	■	■	■	■
West Virginia	■	■	1	■	■	■	
Wisconsin			1	■	■	■	■
Wyoming	■	■	40	■	■		
Total	32	23	5,367	49	45	32	16

[a]In the Brady States contacts are the chief law enforcement officers (CLEOs); In Brady-alternative States these contacts are identified according to criteria of each State.
[b]Background checks are required for handguns and long guns.

Table 3. Number of applications to buy handguns received or rejected in 21 States reporting complete data, 1996

State	Number of applications: Received	Rejected	Rejection rate
Total	1,513,129	36,030	2.4%
Arizona	72,715	2,203	3.0%
Arkansas	25,742	506	2.0
California	215,804	2,111	1.0
Colorado	51,450	3,518	6.8
Delaware	11,826	639	5.4
Florida	213,133	6,236	2.9
Georgia	89,786	8,463	9.4
Idaho	24,604	791	3.2%
Illinois	178,168	1,997	1.1
Indiana	81,974	907	1.1
Kentucky	67,830	1,600	2.4
Maryland	31,362	344	1.1
Nevada	28,253	574	2.0
New Hampshire	12,997	161	1.2
New Jersey	24,672	280	1.1%
Ohio	60,037	330	.5
South Carolina	53,153	2,467	4.6
Utah	34,073	595	1.7
Virginia	182,384	1,896	1.0
West Virginia	20,538	224	1.1
Wisconsin	32,628	188	.6

Note: Each State had 1 CLEO that reported complete State-wide data for applications and rejections for 1996.

Bureau of Alcohol, Tobacco and Firearms estimates of inquiries and rejections, March 1, 1994, to December 31, 1995

	Bureau of Alcohol, Tobacco, and Firearms estimates — may include handguns, long guns, and carry permits[a]			
	3/1/94 to 12/31/94		1/1/95 to 12/31/95	
	All States	Original Brady States[b]	All States	Original Brady States[b]
Inquiries and rejections				
Inquiries/applications	3,679,000	1,696,000	4,009,000	1,884,000
Rejected	92,000	42,000	60,000	28,000
Rejection rate	2.5%	2.5%	1.5%	1.5%
Reasons for rejection				
Felony indictment/conviction	65,000	30,000	43,000	20,000
Other	26,000	12,000	17,000	8,000

Note: All estimated counts are rounded. Percentages were calculated from unrounded data. Detail may not add to total because of rounding.
[a]Data for 1994 and 1995 from the Bureau of Alcohol, Tobacco and Firearms are based on inquiries to the FBI's National Crime Information Center.
[b]Original Brady States are the 32 States required to follow presale review procedures set out in the Brady Act when it became effective on February 28, 1994.

The Bureau of Alcohol, Tobacco and Firearms has calculated the number of applications for firearm purchases from March of 1994 to the end of 1995. (See *Presale Firearm Checks*, BJS Bulletin, NCJ-162787, February 1997.) In the first 9 months of 1994 there were an estimated 3,679,000 inquiries to the FBI's National Crime Information Center (NCIC); in 1995, an estimated 4,009,000.

The ATF estimates were calculated using the number of firearm-coded inquiries to the NCIC. The percentage of denials used for these estimates was based on the experiences of jurisdictions that had implemented presale firearms check procedures prior to the Brady Act.

The Firearm Inquiries Statistics (FIST) program administered by BJS receives data from a sample of chief law enforcement officers responsible for background checks of firearm purchasers. The FIST data describe only applications for handgun purchases, a fraction of the larger number of potential firearm purchases. (The Brady Act as well covers only applications for a handgun purchase.)

FIST began in January 1996. The estimated number of inquiries for handgun purchases during the year was 67% of the total number of firearm inquiries to the NCIC (3,842,000). To estimate the number of inquiries for handgun purchase applications before 1996, the ATF estimates were multiplied by 67%.

In the last 9 months of 1994 there were an estimated 2,483,000 inquiries for handgun purchases and an estimated 62,000 rejections. In 1995 the estimated number of inquiries was 2,706,000, with an estimated 41,000 rejections.

Estimated number of handgun inquiries (applications to purchase) and rejections, March 1, 1994, to December 31, 1996

	3/1/94 - 12/31/94	1/1/95 - 12/31/95	1/1/96 - 12/31/96
Estimated number of handgun inquiries	2,483,000	2,706,000	2,593,000
Estimated number of rejections	62,000	41,000	70,000
Rejection rate	2.5%	1.5%	2.7%

Brady Act

The Brady Act was enacted in November 1993 and became effective in February 1994. The interim provisions of the Act require that Federally licensed firearm dealers request a presale check on all potential handgun purchasers. The requests are made to CLEOs in the jurisdictions where the prospective purchasers reside. The Federal firearms licensee must wait 5 business days before transferring the handgun to the buyer, unless earlier approval is received from the CLEO. These interim procedures will terminate no later than November 30, 1998.

The "interim provision" also permits States to follow a variety of alternative State procedures. (See *Survey of State Procedures Related to Firearm Sales, 1996*, BJS report, NCJ-163918, September 1997.) To qualify under these alternatives, State law must require that before any licensee completes the transfer of a handgun to a nonlicensee, a government official must verify that possession of a handgun by the transferee would not be a violation of law. Examples of Brady-alternative States include California ("point-of-sale check"), Virginia ("instant check"), and Missouri (permit).

After November 1998 a Federal firearms licensee will be required to perform background checks on potential purchasers of all firearms. These inquiries will be made through the National Instant Criminal Background Check System (NICS) which the FBI will operate and maintain.

Under the provisions of the Brady Act, the NICS must be established no later than November 1998, at which time the procedures related to the 5-day waiting period of the interim system will be eliminated. These "instant" background checks will determine, based on available records, if an individual is prohibited under the Federal Gun Control Act or State law from receiving or possessing firearms.

Under the FBI's proposed NICS configuration, State criminal history records will be provided in the majority of cases through each State's central repository and the Interstate Identification Index (III). The index, maintained by the FBI, points instantly to criminal records that States hold. In addition, the FBI will provide records of Federal offenses, Federally maintained State data, and Federal data on nonfelony disqualifications. States responding to NICS inquiries for nonfelony prohibitions will provide their records directly. Federal firearms licensees in States that do not serve as a point of contact to the system will make inquiries directly to NICS.

The National Criminal History Improvement Program (NCHIP)

To ensure immediate availability of complete and accurate State records, the Brady Act established a grant program authorized at $200 million. An additional authorization of $20 million was made available through the National Child Protection Act of 1993 (Pub. L. No. 103-209, 107 Stat. 2490 (1993)). Both authorizations were designed to assist States to develop or improve existing criminal history records systems and to establish an interface with the NICS.

Over $112 million was given in direct awards to the States during fiscal years 1995 and 1996. The appropriation for 1997 is $50 million. NCHIP funds have supported direct technical assistance to States, evaluation, and research related to improving criminal and other nonfelony records within the States.

The FIST program was established under NCHIP. Information requested for the initial survey does not include data traceable to an applicant, and the computer program that was subsequently developed and used by some agencies for both operational purchases and to collect FIST data transmits only the appropriately aggregated or categorized responses. None of the FIST information provided from agencies to BJS contains or reveals the identity of individual applicants. Moreover, the computer program also assists agencies to purge records after the delay times specified by law.

Methodology

The following presents the approach used to derive the 1996 estimates from a sample of chief law enforcement officers charged with determining eligibility to purchase a handgun. The data were stratified by size of the population served. Information collected included:

- handgun applications made to the CLEO;
- handgun applications rejected by the CLEO; and
- the reasons for rejection.

Sample Design

The sample for the survey was selected from a population of 5,400 CLEOs. These CLEOs ranged from State agencies which served an entire State population (category X); local CLEOs which served a population greater than 100,000 (category C); local CLEOs which served a population between 10,000 and 100,000 (category B); and local CLEOs which served a population of less than 10,000 (category A). Population size was based on 1990 Census information. The population categories were chosen to be consistent with those commonly used by the FBI when conducting similar studies. A total of 600 CLEOs were randomly selected for inclusion in the study.

Since the start of this study two States have implemented operation of statewide CLEOs, and one State has begun reporting data for local jurisdictions. These changes have reduced the total number of CLEOs selected to 579.

The sample universe includes all 25 statewide CLEOs (category X), all 118 CLEOs who service populations in excess of 100,000 persons (category C), 189 CLEOs from category B, and 247 from category A. For each State 4% or a minimum of five CLEOs were selected in their respective A and B categories.

Overall, 311 CLEOs provided data for a response rate of 54%. Respondents included 21 statewide CLEOs, 2 agencies providing statewide totals (see below), 49 local CLEOs in category C, 95 local CLEOs in category B, and 144 local CLEOs in category A. The 311 agencies that submitted data serviced 160,198,309 people or 65% of the 248,102,973 people who were identified in the 1990 Census.

Based on data provided by these CLEOs, national estimates were developed using weighting factors derived from the original stratification. When a CLEO did not provide data for all months, a simple linear extrapolation was used to generate a 12-month total.

Information for two States required further analysis. Oregon switched from local CLEOs to a statewide CLEO during 1996. Estimates for the year for number of applications and number of rejections were based on the data from the newly established statewide CLEO. New Jersey provided data on the number of applications and the number of rejections for the whole State, but did not provide reasons for rejections. Local CLEOs that had been sampled in Oregon and New Jersey provided data on the reasons for rejection.

For purposes of applications, rejections and rejection rates, information from the statewide CLEOs was used. The descriptive information about reasons for rejections used the data from both the local and State CLEOs.

Maine is one of several States that use both local CLEOs and the State police in areas not serviced by a local CLEO. In the other States' data from the State police were classified as category A data because of the rural area that is normally being served. However, Maine, because of the large portion of the State that the State police service (40%) and the wide range of population classifications they serve, State police data were classified as category X data.

Definition of outliers

Five agencies with a rejection rate over four standard deviations above the total standard rejection rate were classified as outliers and their data were not used for projection of estimates. In addition, one agency was classified as an outlier because it had changed its record keeping procedures during the year and its final rejection rate could not be determined with sufficient accuracy. The data provided by the outliers were added to the total estimated counts to get the final national totals.

Accuracy of the estimates

The accuracy of the estimates presented in this report depends on two types of errors: non-sampling and sampling. In this study, nonsampling error may be occur from the following: nonresponse; differences in the ways CLEOs process, code, store and retrieve their information; differences in interpretation of the survey questions; and even activities which delay personnel from doing paperwork.

Also, the process of a researcher receiving data and storing it in the computer for analysis can introduce non-sampling error. In any sample survey, the full extent of non-sampling error is never fully known. However, steps were taken to minimize the potential for error. Extensive telephone follow-ups were made to encourage responses, answer questions about misunderstood requests, and generally help CLEOs in assembling the information in a form useable by FIST. Extensive verification of the data ensured the accuracy of the numbers.

All confidence intervals discussed in this report were set at a 95-percent confidence level. Because of the sampling design, State comparisons cannot be made. The estimates are only for the 50 States and do not include U.S. territories or the District of Columbia. Sales of all firearms are prohibited in the District of Columbia except to law enforcement officers.

Data collection procedures

The Regional Justice Information Service (REJIS), through a cooperative agreement with BJS under the Firearms Inquiries Statistics program (FIST), collected the data.

The CLEOs supplied data on either paper or diskette. Several different forms were provided to meet the varying office procedures of the CLEOs. In addition REJIS wrote and provided special software that was distributed free of charge to requesting CLEOs. This software was designed to simplify the record tabulating functions of the CLEO. It also helped to reduce the burden of keeping the statistical data since one of the capabilities of the software was to automatically collect the data needed for the study. In all cases the data that the CLEO sent to REJIS contained only statistical information and would not allow the identification of an individual.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is Director.

BJS Bulletins present the first release of findings from permanent data collection programs such as the Firearm Inquiry Statistics (FIST) program. State and local officials have cooperated in reporting the data presented.

Don Manson, BJS Program Manager, and Darrell K. Gilliard, BJS Statistician, wrote this Bulletin under the supervision of Carol Kaplan, Chief, National Criminal History Improvement Programs, BJS. Gene Lauver, manager of the FIST program, Regional Justice Information Service (REJIS of St. Louis, MO), collected and analyzed the data presented. Terry Tomazic, Ph.D., professor of research methodology at St. Louis University, provided statistical consultation. Tom Hester produced and edited the report. Marilyn Marbrook, assisted by Yvonne Boston and Jayne Robinson, administered final report production.

Further information on the FIST program may be obtained from:

Carol G. Kaplan, *Chief*
Criminal History Improvement Programs
U.S. Department of Justice
Bureau of Justice Statistics
Washington, DC 20531

Gene Lauver, *Project Manager*
Regional Justice Information Service
4255 West Pine Blvd.
St. Louis, MO 63108.

September 1997, NCJ-165704

This report and others from the Bureau of Justice Statistics are available through the Internet —

http://www.ojp.usdoj.gov/bjs/

662210 Barry

Department of Justice

ADVANCE FOR RELEASE AT NOON EDT
THURSDAY, SEPTEMBER 4, 1997

BJS
202/633-3047

BRADY ACT BACKGROUND CHECKS PREVENT 173,000 ILLEGAL HANDGUN PURCHASES SINCE FEBRUARY 1994 IMPLEMENTATION

Handgun Figure is Subset of More Than 250,000 Firearm Sales Blocked Since February 1994

WASHINGTON, D.C. -- In its first analysis of a subset of the estimated 250,000 illegal firearm sales blocked by the Brady Act since it took effect in February of 1994, the Justice Department's Bureau of Justice Statistics (BJS) announced today that an estimated 173,000 illegal handgun sales were blocked by Brady background checks. Approximately 70,000 of the illegal handgun sales were blocked in 1996, BJS reported.

The handgun sales are only a subset of all firearm sales that were blocked under the background check provision of the Brady Act. A previous BJS statistical report, "Presale Firearms Checks," estimated that 6,000 firearms application were rejected each month, totaling more than 250,000 illegal firearms--including rifles and other long guns in addition to

(MORE)

handguns--blocked between the establishment of Brady background checks and May 1997.

The Brady Act requires federally licensed firearm dealers to submit handgun purchase applications for a buyer background check, either under the provisions of the act or under the terms of a comparable state statute. Earlier this year, the U.S. Supreme Court ruled that the federal government could not require states to conduct background checks, although almost every state continues to do such checks.

Altogether last year, dealers throughout the United States obtained background checks for almost 2.6 million handgun purchase applications. Of these, 2.7 percent were rejected following checks by state or local law enforcement officials.

Approximately 47,000 handgun sales were denied because the applicants had been indicted for felony offenses or had felony convictions; 4,200 were fugitives from justice; 3,900 were prohibited because of state laws; 2,700 were the subjects of restraining orders; and 1,000 had mental disabilities.

The remainder of the handgun sale rejections were because

(MORE)

the individual attempting to make the purchase was either a juvenile, an illegal alien, a person dishonorably discharged from the armed services, a person who had renounced citizenship, or someone who had been convicted of a domestic violence offense.

When doing background checks either following the Brady Act procedures or under state laws, 49 states searched criminal history files, 45 checked for fugitives, 32 checked restraining order files and 16 check for a mental disability.

State governments, the FBI and the Bureau of Alcohol, Tobacco and Firearms have identified about 5,200 state and local law enforcement agencies within the United States and designated their heads as Chief Law Enforcement Officers (CLEOs). Data was collected from 311 agencies, including 21 with state-wide jurisdiction. These 21 states contain 65 percent of the United States residents.

The data collected by BJS refer only to attempted handgun purchases from federally licensed firearms dealers.

More specific details are available in the BJS bulletin,

(MORE)

"Presale Handgun Checks, 1996" (NCJ-165704), written by BJS staff members Donald A. Manson and Darrell K. Gilliard. It and a "Survey of State Procedures Related to Firearm Sales, 1996" (NCJ-163918) are available on the BJS Internet home page at:

http://www.ojp.usdoj.gov/bjs/

Additional criminal justice materials can be obtained from the Office of Justice Programs homepage at:

http://www.ojp.usdoj.gov

# # #

BJS97109
After hours contact: Stu Smith at 301/983-9354

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics
Bulletin

September 1997, NCJ 165704

A National Estimate

Presale Handgun Checks, 1996

By Donald A. Manson
BJS Program Manager

Darrell K. Gilliard
BJS Statistician

During 1996, about 2,593,000 background checks of potential handgun buyers prevented an estimated 70,000 purchases. The inquiries revealed purchasers' ineligibility to buy a handgun under State or Federal laws, particularly the Brady Handgun Violence Prevention Act (Pub. L. No. 103-159, 107 Stat. 1536 (1993)) that became effective on February 28, 1994. Nearly 68% of those rejected had been convicted of a felony or were under felony indictment.

From March 1, 1994, through 1996, handgun sellers submitted an estimated 7.8 million inquiries about potential handgun buyers and received about 173,000 rejections. These estimates, drawn from published estimates of inquiries about potential purchasers of firearms, include about 62,000 rejections of handgun purchase applications in the 9 months of 1994 and about 41,000 rejections for all of 1995.

The Firearm Inquiries Statistics (FIST) program administered by the Bureau of Justice Statistics (BJS) collected the 1996 data. FIST was initiated in 1994 to describe presale background checks of applicants to buy a handgun from a Federal firearm licensee. Chief law enforcement officers made the checks in accordance with the Brady Act or comparable State legislation.

Highlights

Presale handgun checks: Estimates of inquiries and rejections, 1996

	Presale checks for handguns, 1/1/96-12/31/96		
	All States	Original Brady States*	Brady States during 1996
Inquiries and rejections			
Inquiries/applications	2,593,000	1,213,000	816,000
Rejected	70,000	44,000	25,000
Rejection rate	2.7%	3.6%	3.1%
Reasons for rejection			
Felony indictment/conviction	47,000	35,000	15,000
Other	23,000	9,000	10,000

Note: All estimated counts are rounded. Percentages were calculated from unrounded data. Detail may not add to total because of rounding.

*Original Brady States are the 32 States required to follow presale review procedures set out in the Brady Act when it became effective on February 28, 1994. At the end of 1996, 23 of the 32 were still Brady States. (See table 2.)

- During 1996 about 70,000 out of an estimated 2,593,000 applications for the purchase of a handgun were rejected due to presale background checks of the potential purchasers.

- From the inception of the Brady Handgun Violence Prevention Act until the end of 1996, an estimated 7,782,000 applications for handgun purchases resulted in 173,000 rejections through background checks.

- The estimates of applications and rejections for handgun purchases include States operating under the Brady Act (Brady States) and States with comparable statutes preventing handgun sales to prohibited persons (Brady-alternative States).

- Overall, 2.7% of all handgun purchasers had their application for purchase rejected during 1996. About 68% of the rejections were for a prior felony conviction or a current felony indictment.

- This Bulletin reports only estimates of attempted handgun purchases, and does not include rifles or other long guns.

- A previous BJS Bulletin, *Presale Firearms Checks* (NCJ-162787, February 1997), included all attempted firearm purchases from March 1, 1994, to December 31, 1995, and potential handgun purchases during the first 6 months of 1996. It estimated that over the period, on average 6,600 firearm applications were rejected each month.

Table 1. Reasons for rejection of handgun purchase applications, national estimates, 1996

Reasons for rejection	All States	Original Brady States	Brady States during 1996
Total	100.0%	100.0%	100.0%
Felony (indictment/ conviction/no disposition)	67.8	78.9	61.0
Fugitive	6.0	7.5	13.0
State law prohibition	5.5	.9	–
Restraining order	3.9	2.8	3.5
Mental illness or disability	1.5	.4	.8
Drug addiction	1.2	1.8	4.4
Local law prohibition	.7	.3	.7
Other*	13.4	7.4	16.6

–Less than .05%.
*Includes illegal aliens, juveniles, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, domestic violence, and other unspecified persons. At the end of 1996, 23 of the 32 original Brady States were still Brady States.

The estimates of applications and rejections for handgun purchases include States operating under the Brady Act (Brady States) and States with comparable statutes preventing handgun sales to prohibited persons (Brady-alternative States). The original 32 Brady States started following the Brady Act review procedures on February 28, 1994. There were 18 original Brady-alternative States. At the end of 1996, because of changed statutes, there were fewer Brady States (23) and more Brady-alternative States (27) than originally.

Rates of rejection of potential handgun purchases in 1996 can be compared for these sets of States — the original or current grouping of Brady and Brady-alternative States.

In 1996 the original Brady States processed 1,213,000 applications and rejected about 44,000, a rejection rate of 3.6%. The original Brady-alternative States processed 1,380,000 applications and rejected 26,000 — 1.9%, which differed significantly from the rate for the original Brady States.

The current Brady States in 1996 processed 816,000 applications, of which they rejected 25,000, a rejection rate of 3.1%. The current Brady-alternative States processed 1,778,000 and rejected 45,000 — 2.5%, a rate that was not significantly different from the rejection rate of current Brady States.

For all States, the most prevalent reason for rejection was that the applicant either was under felony indictment or had a felony conviction (67.8%) (table 1). Being a fugitive from justice (6.0%) or a violator of a State law prohibition (5.5%) were the next most prevalent reasons for rejection of a handgun purchase, followed by being under a restraining order (3.9%).

Almost all States are able to check computer databases to determine past criminal convictions. Some States are able to refer to other databases to check additional characteristics that may make a person ineligible to purchase a handgun — fugitive status, court restraining orders, and mental illness.

In the 45 States that reported checking a database for fugitive status, 6% of handgun application rejections were for such a status. In the 32 States checking for restraining orders, potential purchasers under court order accounted for 6% of application rejections. Sixteen States reported searching databases for applicants with mental illness; in these States mental illness accounted for 3% of the handgun application rejections.

Nonfelony reason	Percent of rejections in States which search records for specific nonfelony reasons
Fugitive	6%
Court restraining orders	6
Mental illness	3

These categories are defined in the Federal Gun Control Act of 1968, as amended, or related State legislation. During 1996 background checks were made on almost 2.6 million applicants for handgun purchases. Since the inception of the Brady Act, nearly 7.8 million background checks have been made. Through the end of 1996 about 173,000 of these applicants were prevented from legally purchasing a handgun.

Statewide reporting of handgun applications and rejections

State governments, the Federal Bureau of Investigation (FBI), and the Bureau of Alcohol, Tobacco and Firearms (ATF) have cooperated to identify about 5,400 law enforcement agencies and their heads as chief law enforcement officers (CLEOs) nationwide. Data for 1996 were collected from 311 CLEOs out of a sample of 600.

Among the responding CLEOs, 21 served as the only CLEO for the State and provided statewide totals (table 3). These States, which represented 50% of U.S. resident population and over half of the total applications for handgun purchases during 1996, processed 1,513,129 applications and rejected 36,030 — a rejection rate of 2.4%. Seventy-three percent of rejections were for a past felony conviction or felony indictment.

Reason for rejection by 21 Statewide CLEOs	
Felony (indictment/ conviction/no disposition)	73%
Fugitive	6
State law prohibition	4
Restraining order	4
Mental illness or disability	1
Drug addiction	1
Other*	11

*Includes illegal aliens, juveniles, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, domestic violence, and other unspecified persons.

Background

Thirty-two States and Puerto Rico were required to follow the review procedures set forth in the Brady Act when it became effective (identified in this Bulletin as *original Brady States*).

By the end of 1996, the number of States following the Brady Act review *procedures rather than alternative* State statutes had dropped to 23 (identified as *current Brady States;* see table 2 for each State's Brady status.)

Pursuant to the Federal Gun Control Act of 1968, as codified at 18 U.S.C. § 922, the sale of firearms is prohibited if the prospective purchaser —

- is a juvenile;
- is a fugitive from justice;
- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than 1 year;
- is an unlawful user of a controlled substance;
- has been adjudicated as a mental defective or committed to a mental institution;
- is an alien unlawfully in the United States;
- was discharged from the armed forces under dishonorable conditions;
- has renounced U.S. citizenship;
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child; or
- is a person convicted of domestic violence.

Table 2. Gun purchaser background checks for handgun purchases, by State, 1996[a]

State	Brady Status: Original 3/1/94	Brady Status: Current 12/31/96	Number of law enforcement agencies responsible for record checks	State databases being accessed: Criminal histories	Wanted fugitives	Restraining orders	Mental health
Alabama	■	■	67	■	■		
Alaska	■	■	35	■	■	■	
Arizona	■	■	1	■	■		
Arkansas	■	■	1	■	■	■	
California[b]			1	■	■	■	■
Colorado	■		1	■	■	■	
Connecticut			1	■	■	■	
Delaware[b]			1	■	■		■
Florida[b]			1	■	■	■	
Georgia	■		1	■	■		■
Hawaii[b]			4	■			■
Idaho	■		1	■	■	■	
Illinois[b]			1	■	■	■	■
Indiana			1	■			
Iowa			99	■	■	■	■
Kansas	■	■	123	■			
Kentucky	■	■	5	■	■	■	
Louisiana	■	■	64	■	■		
Maine	■	■	128	■	■	■	
Maryland			1	■	■	■	
Massachusetts			270	■	■	■	■
Michigan			595	■	■	■	■
Minnesota	■		568	■	■		■
Mississippi	■	■	283				
Missouri			115	■	■	■	
Montana	■	■	56	■	■		
Nebraska			96	■	■		
Nevada	■	■	1	■	■		
New Hampshire	■		1	■	■	■	
New Jersey			483	■	■	■	■
New Mexico	■	■	113	■	■		
New York			58	■	■	■	■
North Carolina	■		100	■	■	■	
North Dakota	■	■	53	■	■	■	
Ohio	■	■	1	■	■	■	
Oklahoma	■	■	440	■			
Oregon			1	■	■	■	■
Pennsylvania	■	■	67	■	■		
Rhode Island[b]	■	■	39	■	■	■	■
South Carolina	■	■	1	■	■		
South Dakota	■	■	66	■	■	■	
Tennessee	■		96	■	■	■	
Texas	■	■	991	■	■	■	
Utah	■		1	■	■	■	
Vermont	■	■	22	■	■	■	
Virginia[b]			1	■	■	■	■
Washington	■		291	■	■	■	■
West Virginia	■	■	1	■	■	■	
Wisconsin			1	■	■	■	■
Wyoming	■	■	40	■	■		
Total	32	23	5,367	49	45	32	16

[a]In the Brady States contacts are the chief law enforcement officers (CLEOs); in Brady-alternative States these contacts are identified according to criteria of each State.
[b]Background checks are required for handguns and long guns.

Table 3. Number of applications to buy handguns received or rejected in 21 States reporting complete data, 1996

State	Number of applications: Received	Number of applications: Rejected	Rejection rate
Total	1,513,129	36,030	2.4%
Arizona	72,715	2,203	3.0%
Arkansas	25,742	506	2.0
California	215,804	2,111	1.0
Colorado	51,450	3,518	6.8
Delaware	11,826	639	5.4
Florida	213,133	6,236	2.9
Georgia	89,786	8,463	9.4
Idaho	24,604	791	3.2%
Illinois	178,168	1,997	1.1
Indiana	81,974	907	1.1
Kentucky	67,830	1,600	2.4
Maryland	31,362	344	1.1
Nevada	28,253	574	2.0
New Hampshire	12,997	161	1.2
New Jersey	24,672	280	1.1%
Ohio	60,037	330	.5
South Carolina	53,153	2,467	4.6
Utah	34,073	595	1.7
Virginia	182,384	1,896	1.0
West Virginia	20,538	224	1.1
Wisconsin	32,628	188	.6

Note: Each State had 1 CLEO that reported complete State-wide data for applications and rejections for 1

Bureau of Alcohol, Tobacco and Firearms estimates of inquiries and rejections, March 1, 1994, to December 31, 1995

	Bureau of Alcohol, Tobacco, and Firearms estimates — may include handguns, long guns, and carry permits[a]			
	3/1/94 to 12/31/94		1/1/95 to 12/31/95	
	All States	Original Brady States[b]	All States	Original Brady States[b]
Inquiries and rejections				
Inquiries/applications	3,679,000	1,696,000	4,009,000	1,884,000
Rejected	92,000	42,000	60,000	28,000
Rejection rate	2.5%	2.5%	1.5%	1.5%
Reasons for rejection				
Felony indictment/conviction	65,000	30,000	43,000	20,000
Other	26,000	12,000	17,000	8,000

Note: All estimated counts are rounded. Percentages were calculated from unrounded data. Detail may not add to total because of rounding.
[a]Data for 1994 and 1995 from the Bureau of Alcohol, Tobacco and Firearms are based on inquiries to the FBI's National Crime Information Center.
[b]Original Brady States are the 32 States required to follow presale review procedures set out in the Brady Act when it became effective on February 28, 1994.

The Bureau of Alcohol, Tobacco and Firearms has calculated the number of applications for firearm purchases from March of 1994 to the end of 1995. (See *Presale Firearm Checks*, BJS Bulletin, NCJ-162787, February 1997.) In the first 9 months of 1994 there were an estimated 3,679,000 inquiries to the FBI's National Crime Information Center (NCIC); in 1995, an estimated 4,009,000.

The ATF estimates were calculated using the number of firearm-coded inquiries to the NCIC. The percentage of denials used for these estimates was based on the experiences of jurisdictions that had implemented presale firearms check procedures prior to the Brady Act.

The Firearm Inquiries Statistics (FIST) program administered by BJS receives data from a sample of chief law enforcement officers responsible for background checks of firearm purchasers. The FIST data describe only applications for handgun purchases, a fraction of the larger number of potential firearm purchases. (The Brady Act as well covers only applications for a handgun purchase.)

FIST began in January 1996. The estimated number of inquiries for handgun purchases during the year was 67% of the total number of firearm inquiries to the NCIC (3,842,000). To estimate the number of inquiries for handgun purchase applications before 1996, the ATF estimates were multiplied by 67%.

In the last 9 months of 1994 there were an estimated 2,483,000 inquiries for handgun purchases and an estimated 62,000 rejections. In 1995 the estimated number of inquiries was 2,706,000, with an estimated 41,000 rejections.

Estimated number of handgun inquiries (applications to purchase) and rejections, March 1, 1994, to December 31, 1996

	3/1/94 - 12/31/94	1/1/95 - 12/31/95	1/1/96 - 12/31/96
Estimated number of handgun inquiries	2,483,000	2,706,000	2,593,000
Estimated number of rejections	62,000	41,000	70,000
Rejection rate	2.5%	1.5%	2.7%

Brady Act

The Brady Act was enacted in November 1993 and became effective in February 1994. The interim provisions of the Act require that Federally licensed firearm dealers request a presale check on all potential handgun purchasers. The requests are made to CLEOs in the jurisdictions where the prospective purchasers reside. The Federal firearms licensee must wait 5 business days before transferring the handgun to the buyer, unless earlier approval is received from the CLEO. These interim procedures will terminate no later than November 30, 1998.

The "interim provision" also permits States to follow a variety of alternative State procedures. (See *Survey of State Procedures Related to Firearm Sales, 1996*, BJS report, NCJ-163918, September 1997.) To qualify under these alternatives, State law must require that before any licensee completes the transfer of a handgun to a nonlicensee, a government official must verify that possession of a handgun by the transferee would not be a violation of law. Examples of Brady-alternative States include California ("point-of-sale check"), Virginia ("instant check"), and Missouri (permit).

After November 1998 a Federal firearms licensee will be required to perform background checks on potential purchasers of all firearms. These inquiries will be made through the National Instant Criminal Background Check System (NICS) which the FBI will operate and maintain.

Under the provisions of the Brady Act, the NICS must be established no later than November 1998, at which time the procedures related to the 5-day waiting period of the interim system will be eliminated. These "instant" background checks will determine, based on available records, if an individual is prohibited under the Federal Gun Control Act or State law from receiving or possessing firearms.

Under the FBI's proposed NICS configuration, State criminal history records will be provided in the majority of cases through each State's central repository and the Interstate Identification Index (III). The index, maintained by the FBI, points instantly to criminal records that States hold. In addition, the FBI will provide records of Federal offenses, Federally maintained State data, and Federal data on nonfelony disqualifications. States responding to NICS inquiries for nonfelony prohibitions will provide their records directly. Federal firearms licensees in States that do not serve as a point of contact to the system will make inquiries directly to NICS.

The National Criminal History Improvement Program (NCHIP)

To ensure immediate availability of complete and accurate State records, the Brady Act established a grant program authorized at $200 million. An additional authorization of $20 million was made available through the National Child Protection Act of 1993 (Pub. L. No. 103-209, 107 Stat. 2490 (1993)). Both authorizations were designed to assist States to develop or improve existing criminal history records systems and to establish an interface with the NICS.

Over $112 million was given in direct awards to the States during fiscal years 1995 and 1996. The appropriation for 1997 is $50 million. NCHIP funds have supported direct technical assistance to States, evaluation, and research related to improving criminal and other nonfelony records within the States.

The FIST program was established under NCHIP. Information requested for the initial survey does not include data traceable to an applicant, and the computer program that was subsequently developed and used by some agencies for both operational purchases and to collect FIST data transmits only the an- contains or reveals the identity of individual applicants. Moreover, the *computer program* also assists agencies to purge records after the delay times specified by law.

Methodology

The following presents the approach used to derive the 1996 estimates from a sample of chief law enforcement officers charged with determining eligibility to purchase a handgun. The data were stratified by size of the population served. Information collected included:

- handgun applications made to the CLEO;
- handgun applications rejected by the CLEO; and
- the reasons for rejection.

Sample Design

The sample for the survey was selected from a population of 5,400 CLEOs. These CLEOs ranged from State agencies which served an entire State population (category X); local CLEOs which served a population greater than 100,000 (category C); local CLEOs which served a population between 10,000 and 100,000 (category B); and local CLEOs which served a population of less than 10,000 (category A). Population size was based on 1990 Census information. The population categories were chosen to be consistent with those commonly used by the FBI when conducting similar studies. A total of 600 CLEOs were randomly selected for inclusion in the study.

Since the start of this study two States have implemented operation of statewide CLEOs, and one State has begun reporting data for local jurisdictions. These changes have reduced the total number of CLEOs selected to 579.

The sample universe includes all 25 statewide CLEOs (category X), all 118 or a minimum of five CLEOs were selected in their respective A and B categories.

Overall, 311 CLEOs provided data for a response rate of 54%. Respondents included 21 statewide CLEOs, 2 agencies providing statewide totals (see below), 49 local CLEOs in category C, 95 local CLEOs in category B, and 144 local CLEOs in category A. The 311 agencies that submitted data serviced 160,198,309 people or 65% of the 248,102,973 people who were identified in the 1990 Census.

Based on data provided by these CLEOs, national estimates were developed using weighting factors derived from the original stratification. When a CLEO did not provide data for all months, a simple linear extrapolation was used to generate a 12-month total.

Information for two States required further analysis. Oregon switched from local CLEOs to a statewide CLEO during 1996. Estimates for the year for number of applications and number of rejections were based on the data from the newly established statewide CLEO. New Jersey provided data on the number of applications and the number of rejections for the whole State, but did not provide reasons for rejections. Local CLEOs that had been sampled in Oregon and New Jersey provided data on the reasons for rejection.

For purposes of applications, rejections and rejection rates, information from the statewide CLEOs was used. The descriptive information about reasons for rejections used the data from both the local and State CLEOs.

Maine is one of several States that use both local CLEOs and the State police in areas not serviced by a local CLEO. In the other States' data from the State police were classified as category A data because of the rural area that is normally being served. However, Maine, because of the large portion of data were classified as category X data.

Definition of outliers

Five agencies with a rejection rate over four standard deviations above the total standard rejection rate were classified as outliers and their data were not used for projection of estimates. In addition, one agency was classified as an outlier because it had changed its record keeping procedures during the year and its final rejection rate could not be determined with sufficient accuracy. The data provided by the outliers were added to the total estimated counts to get the final national totals.

Accuracy of the estimates

The accuracy of the estimates presented in this report depends on two types of errors: non-sampling and sampling. In this study, nonsampling error may be occur from the following: nonresponse; differences in the ways CLEOs process, code, store and retrieve their information; differences in interpretation of the survey questions; and even activities which delay personnel from doing paperwork.

Also, the process of a researcher receiving data and storing it in the computer for analysis can introduce non-sampling error. In any sample survey, the full extent of non-sampling error is never fully known. However, steps were taken to minimize the potential for error. Extensive telephone follow-ups were made to encourage responses, answer questions about misunderstood requests, and generally help CLEOs in assembling the information in a form useable by FIST. Extensive verification of the data ensured the accuracy of the numbers.

All confidence intervals discussed in this report were set at a 95-percent confidence level. Because of the sampling design, State comparisons cannot be made. The estimates are only for the 50 States and do not include U.S. territories or the District of Columbia. Sales of all firearms are prohibited in the District of Columbia except to law enforcement officers.

Data collection procedures

The Regional Justice Information Service (REJIS), through a cooperative agreement with BJS under the Firearms Inquiries Statistics program (FIST), collected the data.

The CLEOs supplied data on either paper or diskette. Several different forms were provided to meet the varying office procedures of the CLEOs. In addition REJIS wrote and provided special software that was distributed free of charge to requesting CLEOs. This software was designed to simplify the record tabulating functions of the CLEO. It also helped to reduce the burden of keeping the statistical data since one of the capabilities of the software was to automatically collect the data needed for the study. In all cases the data that the CLEO sent to REJIS contained only statistical information and would not allow the identification of an individual.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is Director.

BJS Bulletins present the first release of findings from permanent data collection programs such as the Firearm Inquiry Statistics (FIST) program. State and local officials have cooperated in reporting the data presented.

Don Manson, BJS Program Manager, and Darrell K. Gilliard, BJS Statistician, wrote this Bulletin under the supervision of Carol Kaplan, Chief, National Criminal History Improvement Programs, BJS. Gene Lauver, manager of the FIST program, Regional Justice Information Service (REJIS of St. Louis, MO), collected and analyzed the data presented. Terry Tomazic, Ph.D., professor of research methodology at St. Louis University, provided statistical consultation. Tom Hester produced and edited the report. Marilyn Marbrook, assisted by Yvonne Boston and Jayne Robinson, administered final report production.

Further information on the FIST program may be obtained from:

Carol G. Kaplan, *Chief*
Criminal History Improvement Programs
U.S. Department of Justice
Bureau of Justice Statistics
Washington, DC 20531

Gene Lauver, *Project Manager*
Regional Justice Information Service
4255 West Pine Blvd.
St. Louis, MO 63108.

September 1997, NCJ-165704

This report and others from the Bureau of Justice Statistics are available through the Internet —

http://www.ojp.usdoj.gov/bjs/